

REVIEW OF THE WESTERN AUSTRALIAN FOOTBALL COMMISSION'S CONSTITUTION RELATING TO GOVERNANCE AND THE ELECTION OF COMMISSIONERS

ISSUES PAPER

A. Introduction

1. This paper is intended to identify issues which have been raised concerning certain aspects of the Western Australian Football Commission's (**WAFC**) Constitution relating to governance in general and the election of Commissioners in particular. Issues have been raised by Affiliated Associations, some WAFL Clubs, the Legislative Assembly Public Accounts Committee Report dated 12 November 2020 (**LAPAC Report**) and the WAFC itself. The paper does not seek to assess the validity or merits of the issues or to suggest proposals for amendment to the current WAFC Constitution which may address those issues. It is intended to achieve these objectives through the written submission, consultation and meeting process which will follow the release of this paper, as outlined below.
2. It is assumed that parties who are interested in participating in the review (initially by making a written submission) are familiar with, at least, the current WAFC Constitution, the August 2001 Crawford Report (from which certain elements of the current Constitution were adopted) and the LAPAC Report. Other than where necessary to properly identify an issue, it is not intended to describe the content of any of these documents.
3. Written submissions are not limited to the issues identified in this issues paper and may raise any issue relating to the governance of the WAFC, the composition of the Board of the WAFC and the election of Commissioners. Submissions should seek to provide solutions to the issues raised, although need not attempt to draft the proposed amendments to the current WAFC Constitution.

B. The Review Process

4. The review will involve the following steps, at the times indicated below:
 - (a) Release of this Issues Paper: on or before 31 December 2020.
 - (b) Written submissions from interested parties: 19 February 2021.
 - (c) Consultation and meetings with parties who have made written submissions, concluding: 19 March 2021.
 - (d) Release of the draft report and recommendations: 23 April 2021.
 - (e) Written submissions from interested parties on the draft report and recommendations: 21 May 2021.
 - (f) Final report provided to all stakeholders; i.e. the Board of the WAFC, the WCE, the FFC, the WAFL Clubs and Affiliated Associations: 18 June 2021.

- (g) The Board consults with the Nominee Members of the WAFC [and other stakeholders] to assess support for any amendments recommended by the report, or for other amendments, concluding: 23 July 2021.
 - (h) The Board convenes a general meeting of Nominee Member of the WAFC on at least 21 days' notice at which the recommended, or other, amendments to the Constitution are proposed as a special resolution: 13 August 2021.
 - (i) Whether the revised process for electing Commissioners would be first adopted for the 2021 election of Commissioners or the 2022 election will depend upon the extent to which this indicative timeline is actually achieved.
5. This timeline may change to accommodate a thorough and iterative review. All parties who make a written submission on or before 19 February 2021 will be notified of any change to this timeline.

C. The Issues

6. The issues of concern which have been raised with the current WAFC Constitution fall into 3 separate but related categories;
- (a) first, membership of the WAFC,
 - (b) secondly, the process for electing Commissioners and,
 - (c) thirdly, who should vote and the voting power for the election of Commissioners.

Membership of the WAFC

7. Dealing with the first category, it is relevant to note that under the current WAFC Constitution there are two classes of members of the Commission. First, there are Ordinary Member, who are the Commissioners and, secondly there are Nominee Members, who are nominees of the WCE, the FFC and each of the WAFL Clubs. The Ordinary Members do not have voting rights in relation to ordinary resolutions or special resolutions of members of the WAFC but do have effective voting right in relation to one important step in the process for the election of Commissioners, the postal vote under Article 7.14 and Annexure A of the current WAFC Constitution. The process of electing Commissioners will be dealt with separately below.
8. Of the Nominee Members, currently WCE and FFC each have 45 votes out of 180 (50% between them) and the WAFL Clubs each have 10 votes out of 180 (50% between them) on ordinary and special resolutions under Article 22.1 and Annexure B of the current WAFC Constitution.

Issue 1: *Should Commissioners be members of the WAFC? If not, why not? If so, should they have voting rights on ordinary and special resolutions? If so, what should those voting rights be?*

Issue 2: *Should Affiliated Associations be member of the WAFC? If so, should they have voting rights on ordinary and special resolutions? If so, what should those voting rights be?*

Issue 3: *Should anyone else be a member of the WAFC; e.g., the government? If so, should they have voting rights on ordinary and special resolutions? If so, what should those voting rights be?*

Issue 4: *Generally, what should be the criteria for membership of the WAFC? Financial contribution to the game in WA? Participation contribution? Competition contribution? Talent pathway contribution? Community involvement?*

The process of electing Commissioners

9. Dealing with the second category, it is relevant to note that Article 7 of the current WAFC Constitution provides for a staged process for electing Commissioners. The stages are briefly identified below:
 - (a) the Board invites expressions of interest (**EOIs**) from persons seeking to be Commissioners,
 - (b) the EOIs are distributed to the Nominee Members, the Ordinary Members, each Affiliated Association and the Nominations Committee. The Nominations Committee comprises the Chair of the WAFC and one other Commissioner, and the presidents or chairs of, respectively, the WCE, the FFC, the WAFL Council of Presidents and the Community Football Advisory Committee,
 - (c) the Nominations Committee approves by a majority vote Recommended Candidates for consideration by the Board,
 - (d) the Board determines which of the Recommended Candidates it will endorse (**Endorsed Candidates**) to be put forward to a postal vote of the Members and Affiliated Associations,
 - (e) the Members and Affiliated Associations have the following voting rights on the postal vote (out of 4500): Commissioners 900, WCE 900, FFC 900, WAFL Clubs 150 each and the Affiliated Associations 450 between them,
 - (f) the results of the postal vote are declared by a Returning Officer at a Football Forum (which is a general meeting to which the Affiliated Associations have been invited), with the Endorsed Candidates with the highest number of votes being elected as **Approved Candidates**, and
 - (g) each Approved Candidate is appointed a Commissioner if a resolution is passed as an ordinary resolution (i.e. by Nominee Members only who each have the number of votes described in 8. above) in a secret ballot held at the Football Forum.

10. This staged process involves four distinct decisions each taken by a differently constituted body with different voting rights, being the Nominations Committee (approving Recommended Candidates), the Board (determining Endorsed Candidates), the Members and Affiliated Associations (voting for Approved Candidates) and the Nominee Members (confirming Commissioners).

Issue 5: *Is the process for electing Commissioners too complicated? If so, which decisions should be removed from the process, which decisions should remain in the process, or should other decisions be substituted for all or any of the decisions? If the latter, who should make the decisions? For example, would a process involving only two decisions, the Nominations Committee and the postal vote*

provide the appropriate representative voting and checks and balances? Would a process involving only a decision by members and Affiliated Associations to appoint an appointments committee, and then a decision by the appointments committee to appoint Commissioners provide the appropriate representative voting and checks and balances?

Issue 6: *Generally, what should be the criteria for the process of electing Commissioners? Should it be simplicity, perhaps at the expense of appropriate checks and balances? Should it involve each of the different stakeholders in football in WA being involved or “represented” in some or all of the stages/decisions of the process? What weight should be given to the different stakeholders and on what basis? Again, financial contribution? Participation contribution? Competition contribution? Talent pathway contribution? Community involvement?*

Voting rights for the election of Commissioners

11. Of the four decisions involved in the process of electing Commissioners, the most significant one is the postal vote which decides which of the Endorsed Candidates actually fill the available vacancies for Commissioners and become Approved Candidates. The two earlier decisions entail eliminating interested candidates and the final decision is confirmatory only. The voting rights for the postal vote are described in 9(e) above and are given to the Commissioners and Affiliated Associations, in addition to the Nominee Members. The following issues assume that any amended process for electing Commissioners continues to include a pivotal decision by which “recommended” or “endorsed” or “nominated” candidates are elected to fill the available vacancies, with or without a confirmatory vote (**Election Decision**).

Issue 7: *Are the current voting rights for the Election Decision appropriate? If not, which voter should be given more votes and why? Which voter should be given less votes and why? Should Commissioners have voting rights for the Election Decision?*

Issue 8: *Should the Election Decision be a composite first past the post vote or should Nominee Members and Affiliate Associations be entitled to directly appoint one or more individual Commissioners?*

Issue 9: *If Nominee Members and Affiliated Associations are entitled to directly appoint one or more individual Commissioners, should the maximum number of Commissioners be increased above 8? Should the number of Commissioners be increased in any event?*

12. Written submissions arising from this issues paper should be made to the Executive Manager – Commercial Operations WAFC (Attention: Linda Hamersley lhamersley@wafc.com.au) or to me at jonathoncarson56@gmail.com

Jonathon Bryan Carson

1 December 2020